STATE OF MICHIGAN

COURT OF APPEALS

ZERVOS GROUP, INC.,

Plaintiff-Appellee,

v

FRANCESCO P. CUSUMANO and VITA M. CUSUMANO,

Defendants-Appellants.

UNPUBLISHED
November 14, 2006

No. 270459
Oakland Circuit Court
LC No. 2005-068224-CK

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment entered in favor of plaintiff on a promissory note executed by defendants. The court entered the judgment after granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendants argue that plaintiff was not entitled to summary disposition because the promissory note was unenforceable for lack of consideration. Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The trial court concluded that a preexisting debt may be consideration for a contract, relying on *Ann Arbor Constr Co v Glime*, 369 Mich 669; 120 NW2d 747 (1963). In that case, the plaintiff supplied a corporation with materials on an open account and eventually requested the corporation to execute a promissory note, which was indorsed by Eugene and Leroy Glime. Later, new notes were executed, and Charles Glime and his wife, as well as the wives of Eugene and Leroy Glime, also indorsed the note. The plaintiff sued the corporate and individual defendants for defaulting on the note, but the trial court held that the individual defendants were not liable due to lack of consideration. The Supreme Court disagreed and reversed, explaining that a preexisting debt is sufficient consideration to support a promissory note, even as to parties who signed the note as accommodation indorsers. *Id*. at 674-676.

Ann Arbor Constr Co. supports the trial court's decision in this matter. Like the individual defendants in *Ann Arbor Constr Co*, defendants signed the note as accommodation

indorsers. It was not necessary that there be consideration moving to them. *Id*. at 675. There is no dispute that American Steel Stair, Inc., owed a preexisting debt to plaintiff. The preexisting debt is sufficient consideration moving to the accommodated party (American) to support the signature of the accommodating parties (defendants). *Id*. at 675-676.

Defendants assert that *Ann Arbor Constr Co* is inapplicable because they are not accommodation parties. In support of their argument they rely on a provision of the Uniform Commercial Code, MCL 440.3419(1), which provides:

> If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

According to defendants, this provision means that in order for an instrument to be for accommodation, it must be signed by both the accommodated party and the accommodation party. Defendants argue that the promissory note here was not signed by American and, therefore, was not signed for accommodation.

Contrary to defendants' argument, MCL 440.3419(1) does not state that the accommodated party must sign the instrument; rather, it must be "a party to the instrument." American is identified as a party in the note. Moreover, even if the note does not qualify as an instrument for accommodation under this provision, that does not mean that the principles set forth in *Ann Arbor Constr Co.* are inapplicable, inasmuch as that case was not based on the Uniform Commercial Code. Defendants fail to address this point. Their mere citation to MCL 440.3419(1) is insufficient.

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

Defendants also argue that the trial court erred in making two "factual findings" that were "critical" to its determination. However, whether plaintiff received a premium from American with respect to the new insurance and whether plaintiff paid to insure American are immaterial to the analysis based on *Ann Arbor Constr Co, supra.*[1]

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[1] Defendants also mention that plaintiff "improperly coerced" them to sign the note. However, this issue is not properly before us because defendants did not rely on duress as a defense below, *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992), they do not address it in their statement of questions presented, MCR 7.212(C)(5); *Preston v Dep't of*
(continued…)

Defendants also argue that the promissory note was not a personal guaranty and contend that the instrument is identified as a "Promissory Note" in its title and throughout its body. Defendants do not explain why the designation of the instrument as a promissory note or a personal guaranty is significant where they indorsed the instrument in their individual capacities. Any contention that Francesco Cusumano did not intend to be personally liable on the note is contradicted by his own affidavit in which he stated that Zervos informed him that it would not provide him with the finance agreement concerning the new insurance "unless I signed a promissory note stating that I would be *personally responsible* for past debts to Zervos of American and Structural Steel." (Emphasis added.) Nor is there any basis for concluding that Vita Cusumano signed the agreement in any capacity other than individually, because there was no evidence that she had authority to sign in a representative capacity for any entity involved.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

(…continued)

Treasury, 190 Mich App 491, 498; 476 NW2d 455 (1991), and they do not analyze the defense or cite any authority on it, *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). In any event, to void the contract on the basis of economic duress, one must show a "wrongful act or threat "that deprives" the victim of his unfettered will," and the lack of an adequate legal remedy. *Hungerman v McCord Gasket Corp*, 189 Mich App 675, 677; 473 NW2d 720 (1991). Defendants did not make that showing.